

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

IN RE TROY ANTHONY DAVIS

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CASE NO. CV409-130

O R D E R

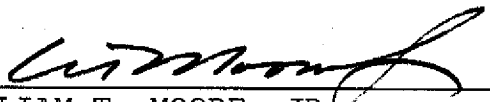
On August 17, 2009, the Supreme Court transferred this case to this Court for "hearing and determination." (Doc. 1.) The Supreme Court specifically ordered this Court to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes petitioner's innocence." (Id.) The purpose of this order is to inform counsel of the structure of the upcoming hearing.

Because this case presents novel questions of law and requires factual findings, the Court will accept both factual evidence and legal briefing. However, the Court will do so in a bifurcated manner. As the central purpose of the hearing is for this Court to receive testimony necessary to make findings of fact, the Court will first receive all of the evidence. When the hearing begins, the Court will expect the Parties to enter immediately into the presentation of evidence. Because the Court has read the pleadings, affidavits, trial record, and post-conviction proceedings record, no opening argument will be required.

After this Court has received all the evidence, the Parties will next be asked to brief the Court on the following three issues:

1. Whether the Eighth Amendment of the United States Constitution bars the execution of a petitioner who has had a full and fair trial without constitutional defect, but can later show his innocence;
2. What the appropriate burden of proof would be in the case of a petitioner alleging innocence subsequent to a full and fair trial, assuming that the Eighth Amendment of the United States Constitution does bar the execution of such an individual upon a sufficient showing of innocence;
3. Whether 28 U.S.C. § 2254(d) bars the Court from granting relief in this case even if it finds that Petitioner can demonstrate his innocence.

SO ORDERED this 14<sup>th</sup> day of June 2010.

  
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WILLIAM T. MOORE, JR.  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA